

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**GOLDEN FURROW FERTILIZER, INC.
ATTN: TOM FULLENKAMP
6850 CHIEF WAPELLO ROAD
AGENCY, IA 52530**

**ADMINISTRATIVE
CONSENT ORDER
2005-HC-61**

**TO: John Moreland
Registered Agent - Golden Furrow Fertilizer, Inc.
129 W 4th Street
P.O. Box 250
Ottumwa, IA 52501**

I. SUMMARY

The Iowa Department of Natural Resources (Department) and Golden Furrow Fertilizer, Inc. ("Golden Furrow") hereby agree to the following Administrative Consent Order (Order). Golden Furrow agrees to pay an administrative penalty of \$4,000 in addition to \$12,258.81 for fish restitution. Golden Furrow will refine and actively enforce their Spill Prevention Control and Counter Measure Plan by no later than January 1, 2008. Golden Furrow will also implement an employee training protocol to cover ecotoxicology, well spill control and containment, and purchase and train employees on ammonia field test kits. Finally, Golden Furrow will ensure that no ammonia wash water is capable of reaching waters of the State. See Sections IV and V for more details.

Any questions regarding this Order should be directed to:

Relating to technical requirements:
Terry Jones, Field Office 6
Iowa Department of Natural Resources
1023 W. Madison
Washington IA 52353
Ph: 319/653-2135

Relating to legal requirements:
Tamara Mullen, Attorney
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319
Ph: 515/281-8934

II. JURISDICTION

The parties hereby agree that this Order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (I.A.C.) chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

The Department and Golden Furrow hereby agree to the following statement of facts:

1. Golden Furrow provides fertilizer and pesticide application services to the farming community of the State. It is owned by Tom Fullenkamp, and includes 8 offices and 4 production locations in southeast Iowa. The production plant at issue here is located in Agency, Iowa – a small town between Ottumwa and Fairfield. This plant has between 15-20 large aboveground storage tanks in a diked area east and south of the main office building for storage of various nitrogen-based herbicides and pesticides.
2. A fish kill was reported to Field Office (FO) #6 on September 14, 2007 in Crow Creek, near Fairfield, IA. Department employees Paul Brandt and Vance Polton investigated that evening, observing dead fish in a 3.3 mile segment of Crow Creek and an unnamed tributary entering it. This tributary receives drainage from a culvert originating on the north side of the Golden Furrow property, flowing under highway 1 via a ditch, finally entering the tributary 100 yards to the west of the highway. Dead fish were observed downstream of where the tributary enters Crow Creek, but not above the confluence point. Additionally, dead frogs were observed in the culvert on the north side of Golden Furrow where it enters the drainage ditch. Accordingly, Golden Furrow was identified as the suspected source of the kill.
3. The next day, September 15, 2007, FO#6 environmental specialist Terry Jones visited Golden Furrow to investigate. Mr. Jones asked the plant manager, Bruce Hollander, whether any recent spills or other activities had occurred that may have resulted in the fish kill, but Mr. Hollander said he knew of none.
4. That same day Mr. Jones collected water samples. "Sample 1" was taken from the culvert on the north side of the Golden Furrow Property. "Sample 2" was collected upstream in the unnamed tributary, to the north of the residential driveway at 1916 highway 1. "Sample 3" was taken downstream in the unnamed tributary, south of the confluence point where the Golden Furrow drainage ditch enters the stream. The results of the water samples were as follows:

	pH	Ammonia	Atrazine	Metolachlor	Temperature
Sample 1	9.0	130 mg/L	100 ug/L	190 ug/L	48° F
Sample 2	8.2	0.33 mg/L	0.14 ug/L	0.27 ug/L	51° F
Sample 3	8.4	0.39 mg/L	0.27 ug/L	0.42 ug/L	51° F

5. The water samples from the tributary were only minimally polluted, which was expected because of the active flowing nature of the stream; the "slug" of contaminants that caused the fish kill would have traveled downstream by the time the investigation took place. Conversely, Sample 1 had not been washed away as there is no flow in the ditch, and elevated levels of farm chemicals were present. Although this sampling point also receives some runoff from the neighboring Reiff Grain property, their operations do not include chemical storing/mixing facilities, eliminating them as a source.
6. The final fish kill tally was 7,681 dead in a 3.3 mile segment of Crow Creek; total cost calculated to be \$12,258.81.

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7. Golden Furrow owner Tom Fullenkamp contacted FO#6 on September 21, 2007 to inquire into the ongoing investigation. Mr. Fullenkamp stated that he had just bought the property on September 1, 2007 and expressed concern that maybe the site was "contaminated." Mr. Jones informed Mr. Fullenkamp that the fish kill was likely the result of a spill or release, not existing site contamination. Fullenkamp said he would investigate.
8. Mr. Fullenkamp called FO#6 on September 24, 2007 to state that a wash water discharge from an ammonia (NH_3) storage tank may have occurred, but could not confirm. FO#6 provided him with a copy of the soil and water sample results.
9. A Notice of Violation (NOV) was issued to Golden Furrow on October 1, 2007 for a prohibited discharge into a water of the State.
10. Mr. Fullenkamp faxed a report to FO#6 on October 4, 2007 admitting that a discharge of ammonia-tainted water did occur on September 10, 2007 from a 2,640-gallon NH_3 storage tank when the tank overfilled with water during a pressure test.
11. Mr. Fullenkamp's report stated that plant manager Bruce Hollander was on duty when the spill occurred, and was even personally involved in the tank's pressure test. However, when Mr. Hollander was specifically questioned by FO#6 about any potential spills or releases at the beginning of the investigation, Mr. Hollander stated that he knew of none. Mr. Fullenkamp attempted to explain Mr. Hollander's omission by stating that Mr. Hollander told Mr. Fullenkamp that he didn't believe any harm could have resulted from the spill.
12. Golden Furrow has four previous hazardous condition incidents (HIS numbers: 050100-PFB-1552; 052904-RAR-1345; 111105-PFB 1337; 112506-PFB-1841). Additionally, two complaints involving Golden Furrow have been filed with the Department (dated 7/96-45 and 4/99-24). None of these have resulted in enforcement actions.

IV. CONCLUSIONS OF LAW

The parties hereby agree that the following conclusions of law are applicable to this matter:

1. Iowa Code chapter 455B, Division III, Part I (sections 455B.171 - 455B.198) establishes the Water Quality program. Section 455B.177 declares that it is in the interest of the people of Iowa to implement the Clean Water Act, and its accompanying federal regulations and guidelines--which includes the issuance of permits regulating the discharge of pollutants into waters of the State.
2. Iowa Code section 455B.186(1) and 567 Iowa Administrative Code (I.A.C.) 62.1(1) prohibit the discharge of "a pollutant" into "a water of the State" unless it is released pursuant to a valid National Pollutant Discharge Elimination System (NPDES) permit issued by the director. NPDES permits are issued to point sources pursuant to Iowa Code section 455B.197 and 567 I.A.C. chapter 62. The State has adopted federal effluent limitation standards by reference where they exist, and impose different standards when necessary to comply with applicable water quality standards. See 567 I.A.C. 62.8(2).
3. A "pollutant" is defined in Iowa Code section 455B.171(18) as "sewage, industrial waste, or other waste." Ammonia-tainted wash water constitutes "other waste" under Iowa Code section 455B.171(15) due to its chemical components.

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4. The unnamed tributary leading from Golden Furrow's drainage ditch and Crow Creek qualify as "waters of the State" pursuant to Iowa Code section 455B.171(37) which defines the term to include "any stream, . . . watercourse, waterway, . . . drainage system, and any other body or accumulation of water . . . public or private, which are contained within . . . the state"

4. Golden Furrow did not have a NPDES permit authorizing the discharge of a pollutant into a water of the State in violation of the above-cited law.

5. The "actual, imminent, or probable spilling, leakage or release" of ammonia-tainted water into the environment constitutes a "hazardous condition" pursuant to Iowa Code section 455B.381(4) and 567 I.A.C. 131.2. Ammonia is considered a "hazardous substance" under Iowa Code section 455B.381(5) and 567 I.A.C. 131.1, both of which adopt by reference the hazardous substance designation list contained in 40 C.F.R. 116.4 (as authorized to be created by 33 U.S.C. § 1321(b)(2)(A)).

6. The party "storing, handling, . . . or disposing of a hazardous substance" must notify the Department and local police department of the occurrence of a hazardous condition as soon as possible, but no later than six (6) hours after the onset of the hazardous condition or its discovery. See Iowa Code section 455B.386 and 567 I.A.C. 131.2. Failure to do so subjects the party to a civil penalty of \$1,000. *Id.*

7. Golden Furrow never notified the Department of the release of the ammonia-tainted water, and only fully admitted the release had occurred 24 days after the fact – subsequent to the Department initiating its own investigation and the issuance of a NOV.

8. Iowa Code section 481A.151 and 571 I.A.C. Chapter 113 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the Department for injury caused to a wild animal by the pollution. Golden Furrow's release of ammonia-tainted water resulted in 7,681 dead fish in Crow Creek, rendering Golden Furrow liable for restitution costs of \$12,358.81.

V. ORDER

THEREFORE, the Department hereby orders and Golden Furrow agrees to the following:

1. Golden Furrow agrees to pay a \$4,000 penalty and \$12,358.81 for fish restitution to the order of the Iowa Department of Natural Resources within thirty (30) days of receipt of this Order.
2. Golden Furrow agrees to refine and actively implement their Spill Prevention Control and Counter Measure Plan by no later than January 1, 2008 to address proper handling and storing of chemicals and chemical-tainted water.
3. Golden Furrow agrees to implement employee training and protocol that will require testing of all wash water for ammonia and other chemicals prior to discharge, and will also ensure that no discharge reaches a water of the State.

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VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties in Iowa District Court of up to \$5,000 per day of violation for the water quality violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.

2. Iowa Code section 455B.386 and 567 I.A.C. 10.2(4) authorizes the administrative assessment of a \$1,000 penalty for the failure to comply with hazardous condition notification requirements.

3. Iowa Code sections 455B.175 and 455B.109 authorize the enforcement of water quality standards through the issuance of an administrative order and an accompanying penalty up to \$10,000. The Environmental Protection Commission established procedures and criteria for the assessment of administrative penalties in 567 I.A.C. Chapter 10. Pursuant to those rules, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Administrative Consent Order with a penalty.

ECONOMIC BENEFIT: There is no readily identifiable economic benefit for Golden Furrow under these facts. The contaminated soil at the spill site and drainage culvert would have been land applied immediately after the spill occurred just as it has been now, after Departmental investigation. As such, the Department is deferring an assessment based on this factor.

GRAVITY: The release of the ammonia-tainted water resulted in a significant environmental impact with 7,681 dead fish found in the unnamed tributary leading from the Golden Furrow property and Crow Creek. Because this harm could have been avoided if proper chemically-tainted wash water handling procedures had been in place, \$1,000 is assessed for this factor.

CULPABILITY: Golden Furrow's failure to properly handle the ammonia-tainted water or to track the spill so as to realize it had entered a water of the State and required reporting resulted in a release and fish kill that could otherwise have been avoided. Additionally, Plant Manager Bruce Hollander acted in bad faith at the beginning of the Department's investigation by failing to honestly answer questions concerning whether any recent spills had occurred on site. This omission is significant and must be considered willful as Mr. Hollander was personally involved in the spill at issue, and his knowledge of the harm ammonia-tainted water presents to the environment is inferred due to his position as Plant Manager. However, because Golden Furrow owner Tom Fullenkamp has interacted with the Department in an efficient, thorough, and courteous manner, exhibiting a good faith desire to comply with rules and regulations in the future, only \$2,000 is assessed for this factor.

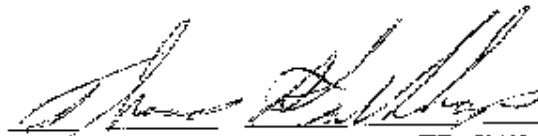
VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.178, and 561 I.A.C. 7.5(1), as adopted by reference in 567 I.A.C. chapter 7, authorize a written notice of appeal to the Environmental Protection Commission. This Order is entered into knowingly by and with the consent of Golden Furrow. By signing this Order all rights to appeal this Order are waived.

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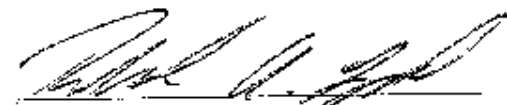
VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to a unilateral administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191



GOLDEN FURROW FERTILIZER, INC.
by Tom Fullenkamp, Owner

Dated this 20 day of Dec, 2007



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 9 day of Jan, 2008

Golden Furrow Fertilizer, Inc.: Field Office 6; Tamara Mullen; EPA; I.C.1; IV.A.